IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Crl.MC.No. 3128 of 2007()

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CC.128/2007 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER: ACCUSED:

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1. S.M. MANSOOR, AGED 48 YEARS,
   S/O. SALE MOHAMMED IBRAHIM SAID, HOUSE NO.12/799,
   JAWAHAR ROAD, SAFIA MANSION, KOCHI-2.

2. MRS. ANJUM RAFIQUE,
   W/O. RAFIQUE ISMAIL SAIT, 2-D, BAYVIEW PARTMENT,
   TOWER ROAD, FORT KOCHI, COCHIN-682 001.

3. MRS. TABASHUM MASOOD,
   W/O. MASOOD ISMAIL SAID, RAFIQUE MANZION,
   DARUL SALAM ROAD, COCHIN-682 005.

4. MRS. NASREEN NADEEM, W/O.NADEEM AZEEZ,
   HOUSE NO.91/1, INFANTRY ROAD, BANGALORE-1.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: COMPLAINANT & STATE:

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1. CIRCLE INSPECTOR OF POLICE,
   CENTRAL POLICE STATION, ERNAKULAM.

2. P.A. SADIQ, S/O. ABDUL KHADER,
   PUNNAPUZHA, 3/395-A, SOUTH PARAVUR P.O.,
   PIN-682 320.

3. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

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**Crl.M.C.No.3128 of 2007**

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**Dated this the 10th day of October, 2007**

**O R D E R**

The petitioners face indictment in a prosecution for offences punishable under Section 420 I.P.C. Cognizance has been taken on the basis of a final report submitted by the police after investigation. The crime was registered on the basis of a private complaint filed by the defacto complaint. The crux of the allegation is that there was an agreement between the deceased father of the petitioner and the defacto complainant for sale of an item of property. Advances were received by the father. Subsequently, after the death of the father also, parties agreed to comply with the terms of the agreement. Further amounts were received towards the sale consideration and endorsements were made in the agreement of such subsequent payments. In pursuance of that agreement, a deed of power of attorney was got executed in favour of the defacto complainant. The grievance of the defacto complainant is that he was induced to part with the original agreement on the fraudulent representation that signatures of the co-accused shall be affixed in that and the same shall be returned after affixing the dates. But after getting the agreement, the accused did not return the original agreement to the defacto

complainant. After securing possession of the original agreement, they allegedly, with fraudulent motive, cancelled the power of attorney. This in short is the allegation raised.

2. The petitioners have come before this Court with a prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings. The learned counsel for the petitioners submits that the allegations are false and incorrect and that the powers under Section 482 Cr.P.C do, in these circumstances, deserve to be invoked.

3. I have considered the submissions of the learned counsel for the petitioners. I have gone through the petition filed and the documents annexed.

4. I must alertly remind myself of the nature, quality and contours of the jurisdiction which is sought to be invoked. It is the extraordinary inherent jurisdiction which is sought to be invoked. It is by now trite that satisfactory, compelling and exceptional reasons must be shown to exist justifying the prayer for invocation of such extraordinary inherent jurisdiction. Such jurisdiction is not to be invoked as a matter of course.

5. Ordinarily and normally, an indictee, who faces indictment on the basis of a police report filed, must claim premature termination of proceedings by invocation of the jurisdiction of the learned

Magistrate under Section 239 Cr.P.C. Not that this Court does not have jurisdiction in an exceptional case to invoke the powers under Section 482 Cr.P.C and quash the proceedings, but ordinarily and normally the litigant must resort to the procedure prescribed under the Code under Section 239 Cr.P.C. The Code does contemplate the possibility though rare of groundless charges being raised against an indictee on the basis of police report. In such cases, the Code prescribes Section 239 Cr.P.C to be the remedy available to such a party. In every such case, parties cannot rush to this Court with a prayer for the invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. Sobriety and sagacity must be shown in choosing the right cause for the invocation of such jurisdiction under Section 482 Cr.P.C.

6. I am certainly not satisfied that there are any such features in this case which can persuade this Court to invoke the jurisdiction under Section 482 Cr.P.C. This is a fit case where the petitioner must resort to the provisions under Section 239 Cr.P.C to claim premature termination of proceedings.

7. The learned counsel for the petitioners submits that the accused have entered appearance before the learned Magistrate. Great inconvenience, hardship and loss would result if personal appearance of the petitioners were insisted on all dates of posting. I

find no reason why any Court should insist on such presence. The petitioners can apply before the learned Magistrate. Until their plea for discharge under Section 239 Cr.P.C is considered and a decision taken in the matter, the learned Magistrate need not unnecessarily insist on the personal appearance of the petitioners.

8. With the above observations, this Crl.M.C is dismissed.

**(R.BASANT, JUDGE)**

rtr/-